

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**KATHRYN ANN HEMETEK,**

**Movant,**

**v.**

**Case No.: 3:11-cv-00579  
(Criminal No.: 3:08-cr-00198)**

**UNITED STATES OF AMERICA,**

**Respondent.**

**MOTION TO AMEND ORIGINAL MOTION TO VACATE, SET ASIDE, OR  
CORRECT THE SENTENCE**

The Movant, Kathryn Ann Hemetek, by her attorney, Edward H. Weis, Assistant Federal Public Defender, moves this court to allow her to amend her original Motion to allege that her attorney, Thompson L. Price, failed to provide Constitutionally effective assistance of counsel in connection with negotiating a plea agreement and at sentencing because he believed that in order to convict Ms. Hemetek the government would have to prove Ms. Hemetek was personally involved in the cultivation of marijuana. He believed that she could not be convicted as an aider and abettor. Ms. Hemetek was prejudiced by this mistaken understanding of the law applicable to the charges against her. It infected counsel's advice to go to trial rather than pursue a plea to an offense which did not carry a mandatory minimum. It led her to incorrect belief she was legally innocent of the charges in the indictment. This, in turn, resulted in her failure to accept responsibility for her offense by the time of sentencing. It contributed to counsel's failure to advocate for safety valve relief at sentencing and to advise Ms. Hemetek so that she would qualify for safety valve relief.

Date: May 4, 2012.

Respectfully submitted,

**KATHRYN ANN HEMETEK**

By Counsel

**MARY LOU NEWBERGER  
FEDERAL PUBLIC DEFENDER**

**s/Edward H. Weis**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing **MOTION TO AMEND ORIGINAL MOTION TO VACATE, SET ASIDE, OR CORRECT THE SENTENCE** has been electronically filed with the Clerk of Court this date using the CM/ECF system and served upon opposing counsel as follows:

**VIA CM/ECF:**

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**DATE: May 4, 2012.**

**s/Edward H. Weis**  
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